SUPREME COURT, U. S.
Supreme Court, U.S.
FILED
DEC 7 1968
JOHN F. DAVIS, CLERK

In the Supreme Court of the United States

OCTOBER TERM, 1968.
Nos. 81 and 128.

BROTHERHOOD OF LOCOMOTIVE ENGINEERS,
Petitioner,

vs.

JOHN P. McELROY, *et al.*,
Respondents.

TERMINAL RAILROAD ASSOCIATION OF ST. LOUIS,
Petitioner,

vs.

JOHN P. McELROY, *et al.*,
Respondents.

ON PETITIONS FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

RESPONSE OF PETITIONER BROTHERHOOD OF LOCOMOTIVE ENGINEERS.

HAROLD A. ROSS,
730 Standard Building,
Cleveland, Ohio 44113,

JOHN H. HALEY, JR.,
412 First National Bank Bldg.,
East St. Louis, Illinois,

Counsel for Petitioner Brotherhood of Locomotive Engineers.

Of Counsel:
ROSS & KRAUSHAAR,
730 Standard Building,
Cleveland, Ohio 44113,

HALEY, BARDGETT & WILLIAMSON,
412 First National Bank Bldg.,
East St. Louis, Illinois.

THE GATES LEGAL PUBLISHING CO., CLEVELAND, OHIO—TEL. (216) 621-5647

TABLE OF CONTENTS.

Response of Petitioner Brotherhood of Locomotive Engineers ---------- 1

Conclusion ---------- 10

Appendices:

A. Tabulation, Number of Engineers Subject to Ebb and Flow Process by Selected Railroads—Year 1966 ---------- 11

B. Tabulation, Locomotive Engineers and Firemen Class I Railroads—United States ---------- 11

C. Affidavit of E. E. Watson ---------- 12

TABLE OF AUTHORITIES.

Cases.

Birkholz v. Dirks, 391 F. 2d 289 (7th Cir.), *cert. granted*, October 14, 1968, No. 172, this Term -- 4

Brotherhood of Locomotive Engineers v. Denver & Rio Grande W. R.R., Civil Action No. C-717 (D. Colo., Sept. 9, 1968, appeal pending) ---------- 9

Brotherhood of Locomotive Engineers v. National Mediation Board, 284 F. Supp. 344 (D. D.C. 1968, appeal pending) ---------- 2, 3

Brotherhood of Railroad Trainmen v. Akron & Barberton Belt R. Co., 385 F. 2d 581 (D.C. Cir. 1967) ---------- 3

Case, J. I., Co. v. Labor Board, 321 U. S. 332 (1944) 5

Conley v. Gibson, 355 U.S. 41 (1957) ---------- 6

Elgin, J. & E. R. Co. v. Burley, 325 U.S. 711 (1945) ---------- 5, 9

General Committee v. Missouri-K-T.R. Co., 320 U.S. 323 (1943) ---------- 2

General Committee v. Southern Pacific Co., 320 U.S. 338 (1943) ---- 2

O'Connell v. Erie Lackawanna R. Co., 391 F. 2d 156 (2nd Cir.), *cert. granted*, October 14, 1968, No. 158, this Term ---- 4

Order of RR. Telegraphers v. Railway Express Agency, 321 U.S. 342 (1944) ---- 5

Pennsylvania Railroad Co. v. Rychlik, 352 U.S. 480 (1957) ---- 7

Republic Steel Corp. v. Maddox, 379 U.S. 650 (1965) 6

Transportation-Communication Employees Union v. Union Pacific R. Co., 385 U.S. 157 (1966) ---- 9

Statutes.

Arbitration Board Award No. 282, 41 LAB. ARB. 673 2

National Labor Relations Act, Sec. 9(a) ---- 6, 7

Railway Labor Act

Sec. 2 ---- 7, 9

Sec. 2, Fourth ---- 7

Sec. 2, Seventh ---- 7

Sec. 2, Eleventh (c) ---- 4, 7

Sec. 3, First (q) ---- 9

In the Supreme Court of the United States

OCTOBER TERM, 1968.
Nos. 81 and 128.

BROTHERHOOD OF LOCOMOTIVE ENGINEERS,
Petitioner,

vs.

JOHN P. McELROY, *et al.*,
Respondents.

TERMINAL RAILROAD ASSOCIATION OF ST. LOUIS,
Petitioner,

vs.

JOHN P. McELROY, *et al.*,
Respondents.

ON PETITIONS FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

RESPONSE OF PETITIONER BROTHERHOOD OF LOCOMOTIVE ENGINEERS.

This response of petitioner Brotherhood of Locomotive Engineers ("BLE") is occasioned by the views of the United States with respect to these cases as expressed by the Solicitor General.

BLE believes that those expressions contained therein as to the merits of the questions presented by the petitioners are incorrect and merely reiterate the bases used by the court below in reaching its decision. It is submitted that those views fail to thoroughly respond to the very

basic question of railroad labor relations that has been directly raised in this case and which, therefore, would serve as an appropriate vehicle for this Court to provide long needed guidelines as to the authority of the craft bargaining representative in the railroad operating crafts in the collective bargaining process and the relation of the minority union thereto.

At the outset, it should be noted that the statement of the United States is necessarily colored by an unfounded predicate, that is, the assertion that all locomotive firemen and all locomotive engineers rotate between the two crafts and are in a constant state of mobility. Although this concept of "ebb and flow" between these two crafts appears to have been true when this Court decided *General Committee v. Missouri-K-T. R. Co.*, 320 U. S. 323 (1943), and *General Committee v. Southern Pacific Co.*, 320 U. S. 338 (1943), and may have led to some of the comments therein which have since reflected on the bargaining authority of BLE for the craft of engineers, it is no longer applicable or valid. A study undertaken by BLE and submitted to the District Court in *Brotherhood of Locomotive Engineers v. National Mediation Board*, 284 F. Supp. 344 (D. D.C. 1968, appeal pending) shows that the number of locomotive engineers shuttling between crafts may be less than six percent of the employees of the craft on some carriers and is only fourteen to nineteen percent of the engineer work force on all the nation's rail carriers.[1] This in part stems from the fact that the award of Arbitration Board No. 282, 41 LAB. ARB. 673, authorized the nation's carriers to eliminate up to ninety percent of firemen positions on freight and yard service. As a result the

---

[1] See Appendix A, *infra*, taken from affidavit of C. J. Coughlin, First Assistant Grand Chief Engineer of BLE, to which chart was attached as appendix 18.

number of firemen were reduced from 38,000 in 1963 to 20,000 in 1966. See *Brotherhood of Railroad Trainmen v. Akron & Barberton Belt R. Co.*, 385 F. 2d 581, 610 (D.C. Cir. 1967). Stated another way, by 1966 there were seventy percent more engineers than firemen.[2] Accordingly, there is a shortage of engineers which becomes more acute as the older men are attrited from service, and the carriers are in most instances using all available employees as engineers except for passenger service and to protect vetoed firemen assignments.

In fact, as BLE previously informed the Court, there is no ebb and flow between the crafts of engineers and firemen on the Terminal Railroad. There are 318 locomotive engineers on the seniority roster, thirty-three of whom were directly hired as engineers after Award 282. The Terminal Railroad presently employs sixty-two "fixture firemen," *i.e.*, firemen who have waived rights for promotion and cannot therefore work as engineers. These firemen are employed on approximately twenty-three firemen assignments. Since these firemen employees have high seniority ranking as firemen and the assignments therein are limited, the thirty-three junior engineers and others above them on the engineers' seniority roster cannot flow back into the craft of firemen to obtain any work opportunities when business is slack.[3] It is therefore submitted that both the court below and the United States improperly reached the legal conclusion submitted on the

---

[2] See also Appendix B, *infra*, taken from appendix 5 to Coughlin affidavit in *Brotherhood of Locomotive Engineers v. National Mediation Board, supra*, Civil Action No. 2020-66.

[3] See Appendix C, *infra*, affidavit of BLE General Chairman E. E. Watson, attached as appendix 9 to Coughlin affidavit in *Brotherhood of Locomotive Engineers v. National Mediation Board, supra*, Civil Action No. 2020-66.

basis of assuming that there is mobility between the crafts and that respondents rotate between them.

Though stating that the union shop cases of *Birkholz v. Dirks*, 391 F. 2d 289 (7th Cir.), *cert. granted*, October 14, 1968, No. 172, this Term, and *O'Connell v. Erie Lackawanna R. Co.*, 391 F. 2d 156 (2nd Cir.), *cert. granted*, October 14, 1968, No. 158, this Term, are inapplicable to the issue presented herein, the United States then attempts to support its theory by relying on a view of Section 2, Eleventh (c) of the Act which necessarily assumes that this Court will uphold the decisions of the courts of appeals in those cases. In addition, on page 3, n.2, of its brief, the United States apparently attempts to distinguish the question in the union shop cases on two bases: (1) there is only occasional work performed in the other craft; and (2) the employee's membership was in a union which is not a bargaining representative for any craft of employees on the same railroad. Those facts evidently take those cases out of the "classic situation." As previously noted, the respondents herein are not working in the craft represented by the union in which they hold membership. There is no intercraft mobility situation presented. Further, that the union to which the employee belongs holds the bargaining rights for another craft on the railroad does not seem critical in the Solicitor General's analysis; for at other times it is submitted that the employee may be represented in the grievance procedures at the carrier level by whomever he chooses, whether the union is a bargaining representative on that railroad or whether the employee is even a member of the union representing him. Thus, the case herein does not present the classic situation. However, the theory of the United States would be applicable to all other situations. Therefore, all railroad employees in both the operating and nonoperating crafts would be

entitled to be represented by whomever they choose in grievance handling. And even though the National Labor Relations Act cases are contended not to be in point, it is submitted that the rationale contained in the brief of the United States would encompass the employees governed by that Act.

While admitting that the decision in *Elgin, J. & E. R. Co. v. Burley*, 325 U. S. 711 (1945), only involved the individual employee's right to represent himself in minor disputes, the decision, however, is interpreted in the broadest context possible to mean that the bargaining agent's authority extends only to major disputes. This view overlooks the following critical language contained in this Court's opinion:

> "We need not determine in this case whether Congress intended to leave the settlement of grievances altogether to the individual workers, excluding the collective agent entirely except as they may specifically authorize it to act for them, or intended it also to have voice in the settlement as representative of the collective interest." *Id.* at 737.

The Solicitor General would answer this question by saying that the collective agent is entirely excluded from the process. (Brief, p. 8).[4]

This Court expressed doubts about an unequivocal answer by further stating:

---

[4] This expression would appear to sanction the individual contract theory rejected by the Court in *Order of RR. Telegraphers v. Railway Express Agency*, 321 U.S. 342 (1944) and *J. I. Case Co. v. Labor Board*, 321 U.S. 332 (1944). In the first case, the Court rejected the proposition that a valid contract between an individual and a carrier could be made to supersede the provisions of a collective agreement. The second case held that, after a collective agreement is made, nothing is left to individual agreement except the initial act of hiring.

> "To leave settlements in such cases ultimately to the several choices of the members, each according to his own desire without regard to the effect upon the collective interest, would mean that each affected worker would have the right to choose his own terms and to determine the meaning and effect of the collective agreement for himself. Necessarily, the carrier would be free to join with him in doing so and thus to bargain with each employee for whatever terms its economic power, pitted against his own, might induce him to accept. The result necessarily would be to make the agreement effective, not to all alike, but according to whatever varied interpretations individual workers, from equally varied motivations, might be willing to accept. To give the collective agent power to make the agreement, but exclude it from any voice whatever in its interpretation would go far toward destroying its uniform application." *Id.* at 737, n. 35.

In essence, the ultimate view advanced by the United States would entirely disregard the collective interest of the majority of employees who had selected their craft representative. However, this view is in conflict with the "continuing bargaining" theory adopted by this Court in the more recent cases. See *Conley v. Gibson,* 355 U.S. 41, 46 (1957); *Republic Steel Corp. v. Maddox,* 379 U. S. 650, 653 (1965).

In the latter connection, the United States has misread the import of BLE's reference to Section 9(a) of the National Labor Relations Act. Although the procedures of the two Acts may be somewhat different, the basic labor relations philosophy underlying both is not. The position taken by the court below and by the United States fails to protect the integrity of the collective bargaining agreement arising out of any adjustment of minor disputes and

fails to provide any place for participation by the bargaining representative. It would appear that the Railway Labor Act does not remove the two guarantees specifically expressed in Section 9(a) of the National Labor Relations Act. Rather Section 2 of the Railway Labor Act may be read as providing procedures no broader than under the National Labor Relations Act. If the theory of the amicus were accepted, Section 2, Seventh, may have little meaning and vitality. But, as this Court has stated with respect to the proper interpretation of Section 2, Eleventh (c) of the Act, even the disarmingly clear language of the statute may not be literally applied, when read not in a vacuum but in light of the policies intended to be served. See *Pennsylvania Railroad Co. v. Rychlik*, 352 U. S. 480, 488-489 (1957).

It is submitted that the BLE as collective bargaining representative of the craft has a right to participate in the grievance process on the property, a right which is not negated by the employees' freedom of choice in the settlement of their individual disputes; and, therefore, has the right to seek to be the exclusive representative for handling grievances on the property, except in those instances where the employee desires to represent himself. It is further submitted that the privilege of conferring with the individual employee, expressed in Section 2, Fourth, runs to the carrier; and, therefore, the latter may negotiate with the majority bargaining representative to limit the processing of grievances under the machinery established by the carrier and bargaining representative to the individual or the majority representative and to permit the bargaining representative to have a voice as to the contract's substantive obligations, always subject to the latter's duty not to engage in hostile discrimination. If the employee or group of employees is dissatisfied with the disposition of their

grievance, they would also have the right to submit the dispute to the Adjustment Board.

However, assuming employees can be represented by whomever they choose at the Adjustment Board stage of the minor dispute process, as contended by the United States, does not establish that employees are entitled to the same representation in the earlier stages. Although it is recognized that the Adjustment Board could render a binding award in conflict with the bargaining representative's opinion, the procedures and composition of the Board do partially eliminate the objections raised by the BLE herein. First, the Board seeks out the views of the bargaining agent as to the interpretation of the agreement as applied to the facts of the claim. Second, the bargaining agent has a representative on the tribunal, who participates in the discussion and decision in the matter. Third, the number of members on the division of the Board, here the First Division with ten members, and their removal from the immediate controversy on the property should insure, at least in most instances, an impartial outcome. In the instant case, the minority union to which respondents belong, the Brotherhood of Locomotive Firemen and Enginemen, also has a member on the First Division.

The United States also urges that the ruling sought by BLE "will reduce the value to respondents of their membership in the Firemen's Union and enhance the value of membership in the Engineers' Union." (Brief, p. 10). Conversely, it may be assumed that the theory expressed by the United States would enhance the value of membership in the Firemen's Union at the expense of reducing the value of membership in the BLE or any other bargaining agent for a craft—a purpose diametrically opposed to the basic philosophy of the statute which is to strengthen the role of the collective bargaining representa-

tive. And possibly more important, as this Court recognized in the previously cited quotations from *Elgin*, a carrier may dispose of minor disputes with a minority union in a manner that may reasonably tend to intimidate the employees in their choice of representation.[5]

---

[5] Some comment may be warranted concerning the references to *Brotherhood of Locomotive Engineers v. Denver & Rio Grande W. R.R.*, Civil Action No. C-717 (D. Colo., Sept. 9, 1968, appeal pending). (Brief, pp. 10, 13, 14). There, BLE sought to enjoin the carrier and the Brotherhood of Locomotive Firemen and Enginemen, with the assistance of the National Mediation Board, from entering into an agreement to create a P.L. Board under P.L. 89-456 for the purpose of disposing of grievances that arose while the employees were working as engineers. The Firemen's Union, but not BLE as craft representative, would have the exclusive right to participate in the proceedings and to designate one of its officers as the sole labor member of the panel. The district court dismissed the complaint and cause of action on the basis that the controversy was not ripe for judicial determination in that the P.L. Board had not yet made an award on the merits of the grievances and the court would not presume (1) the Board would violate the terms of its establishing agreement, or (2) illegally engage in collective bargaining and interpretation of BLE's contract. The opinion indicated that if the collective agreement were ignored "serious and difficult questions under the Railway Labor Act and the due process clause of the Fifth Amendment would be raised" and implied that jurisdiction would then be accepted.

For purposes of this case, only two points need be raised. First, the amicus takes this decision to mean that BLE will have a remedy in prosecuting its interest in interpretation of the collective agreement after the P. L. Board enters an award. However, what avenues are open to BLE at that time? It would appear that BLE would have no standing to bring suit to set aside the award under Section 3, First (q); nor would it have any remedy under the provisions of Section 2 as those paragraphs are interpreted by the United States in its brief. But *cf. Transportation-Communication Employees Union v. Union Pacific R. Co.*, 385 U.S. 157 (1966). Second, it would appear more feasible and practicable to adopt the approach contended for by BLE. It would reduce turmoil. On the other hand, the view expressed by the United States may tend toward multiplicity of litigation.

CONCLUSION.

For the foregoing reasons, the petitions for writs of certiorari should be granted.

Respectfully submitted,

HAROLD A. ROSS,
730 Standard Building,
Cleveland, Ohio 44113,

JOHN H. HALEY, JR.,
412 First National Bank Building,
East St. Louis, Illinois,

Counsel for Petitioner
Brotherhood of Locomotive Engineers.

Of Counsel:

ROSS & KRAUSHAAR,
730 Standard Building,
Cleveland, Ohio 44113,

HALEY, BARDGETT & WILLIAMSON,
412 First National Bank Building,
East St. Louis, Illinois.

APPENDIX A.

NUMBER OF ENGINEERS SUBJECT TO EBB AND FLOW PROCESS BY SELECTED RAILROADS—YEAR 1966

(Coughlin Affidavit, Appendix 18.)

Railroad	Working Engineers	Demoted Engineers	Total Engineers	Ebb and Flow Number	Ebb and Flow Percent of Total
Illinois Central RR	257	127	384	127	33.1
St Louis-Southwestern	246	2	248	14	5.6
Southern Pacific (T&L)	118	57	175	16	9.1
Southern Pacific (Pac)	2,269	646	2,915	402	13.8
Great Northern RR	250	123	373	95	25.5
Atlantic Coast Line RR	980	13	993	161	16.2
Total	4,120	968	5,088	815	16.02
A T & S F, Proper	557	299	856	277	25.4
Norfolk & Western (Pocah Reg)	414	204	618	67	10.8
Seaboard Airline	671	277	948	277	29.2
Union Pacific (East)	985	312	1,297	180	13.9
Northern Pacific RR	302	166	468	100	21.4
Total	2,929	1,258	4,187	901	21.5
Grand Total	7,049	2,226	9,275	1,716	18.5

APPENDIX B.

LOCOMOTIVE ENGINEERS AND FIREMEN CLASS I RAILROADS—UNITED STATES

(Coughlin Affidavit, Appendix 5.)

Year	Engineers Pass	Thru Frt	L&W Frt	Yard	Total	Firemen Pass	Thru Frt	L&W Frt	Yard	Total
1935	8,884	12,415	6,569	12,514	40,382	8,102	14,947	7,275	13,818	44,142
1940	8,686	13,504	6,781	14,281	43,252	7,941	15,550	7,255	15,444	46,190
1945	10,366	21,424	8,006	19,877	59,673	9,532	23,331	8,369	21,027	62,259
1950	8,239	15,082	7,528	18,346	49,195	7,490	16,646	7,833	19,206	51,175
1955	6,849	12,015	6,883	18,279	44,026	6,172	13,053	7,005	19,213	45,443
1960	4,841	9,561	6,012	15,803	36,217	4,325	10,309	6,162	17,969	38,765
1961	4,558	8,866	5,705	14,967	34,096	4,116	9,628	5,833	17,039	36,616
1962	4,422	9,036	5,739	15,049	34,246	3,979	9,826	5,799	16,918	36,522
1963	4,350	8,926	5,862	14,788	33,926	3,828	9,590	5,905	16,546	35,869
1964	4,212	9,364	5,864	14,867	34,307	3,652	8,501	4,809	13,002	29,964
1965	4,006	9,896	5,968	15,251	35,121	3,426	6,507	3,295	8,540	21,768

Source: ICC M-300 Annual Statements, Mid-Mo Count.

APPENDIX C.

AFFIDAVIT OF E. E. WATSON.

(Coughlin Affidavit, Appendix 9.)

E. E. WATSON, being duly sworn, deposes and says:

(1) I am E. E. Watson, General Chairman, General Committee of Adjustment, Brotherhood of Locomotive Engineers, Terminal Railroad Association of St. Louis, Chicago and North Western Railway (L. & M. District), Manufacturers Railway, Illinois Terminal Railroad. Previous to my being elected as the duly authorized representative chairman for all locomotive engineers employed by the Terminal Railroad Association of St. Louis and the Chicago and North Western Railway (L. & M. District) I held various local offices in the Brotherhood of Locomotive Engineers and was employed by the Terminal Railroad Association of St. Louis as a locomotive fireman for a period of two years and fifteen days, this period being December 24, 1950 to and including January 7, 1953. I was employed as an engineer from January 8, 1953 to January 11, 1962, a period of nine years. I am on leave of absence from the Terminal Railroad Association of St. Louis and retain seniority rights on this railroad. I was elected General Chairman on January 12, 1962 and have served in this capacity since that date. This General Committee maintains their office at 601 Buder Building, Seven North Seventh Street in St. Louis, Missouri. My following statement is directed and pertains to only the conditions on the Terminal Railroad Association of St. Louis where the preponderance of this General Committee's constituents are employed.

(2) The General Committee of Adjustment, Brotherhood of Locomotive Engineers is the duly designated and authorized bargaining representative, as provided by the

Railway Labor Act, for the craft of locomotive engineers on the Terminal Railroad Association of St. Louis. This statement is further attested to by the numerous agreements or contracts, many of them the National Mediation Board being a party thereto. This General Committee's designated and authorized representation of locomotive engineers has not been contested. There are three-hundred-eighteen (318) locomotive engineers listed on the seniority roster which governs the senority of engineers for the entire Terminal property.

(3) At the present time there are no locomotive firemen employed on the Terminal Railroad Association of St. Louis who can be promoted to the craft of locomotive engineer. The firemen employed by this Carrier, through agreement, have waived all rights for promotion to the craft of locomotive engineer and the future needs for locomotive engineers by the Carrier must be obtained outside the ranks of the presently employed locomotive firemen. Therefore, there not being any locomotive firemen available for immediate employment as locomotive engineers on this property, the Carrier must go outside the ranks of locomotive firemen to obtain engineers.

(4) Under the rules providing for the hiring of engineers there are no restrictions requiring the Carrier to hire experienced individuals for employment as engineers. The Carrier, to this date, has hired a total of thirty-three (33) employees for the purpose of working in the craft of locomotive engineer. These newly hired employees had some experience in engine service through previous employment on the Terminal Railroad Association of St. Louis. They were severed from Carrier employment as provided by the Award of Arbitration Board 282 due to their having less than ten years of service as provided by

the Award. The majority of those severed had less than five years of service at the time of severance.

(5) These employees, although not having been promoted to the craft of locomotive engineer prior to severance, to a certain degree, made themselves available to the Carrier in order that they might receive a second chance in the railroad industry as a locomotive engineer. In conjunction with their personal knowledge and/or opinion that the Carrier had excessively severed employees and in the very near future would need locomotive engineers, they made themselves available to the Carrier in hopes of being hired and qualified as an engineer account of their previous experience. However, for future requirements the Carrier does not have available to them a supply of experienced people, as they have had in the past, and those remaining with one or two years of previous seniority, severed from employment since 1964, will probably not make themselves available for employment after such an extended period of time. The circumstances stated above not being applicable to the one and two year man at the time of his severance has obtained employment on other railroads or in other industry. In the event the few former employees would return, who had engine service experience and offered such re-employment, they would return to railroad employment with an insufficient amount of experience for employment as a locomotive engineer. The Carrier now resorts to untrained individuals from the public for their future supply of locomotive engineers.

(6) As previously stated, there are no firemen that are promotable due to their structure as "fixture firemen." Therefore these employees never work in the craft of locomotive engineer. There are presently employed by the Terminal Railroad Association sixty-two (62) "fixture firemen" for the purpose of employment on approximately

twenty-three (23) veto firemen assignments which have been provided by the Award of Arbitration Board 282. The thirty-three (33) hired engineers are not subject to an ebb-and-flow between the crafts of locomotive engineer and locomotive firemen. When the necessities of the service do not require the use of the hired locomotive engineer, account of his junior standing on the seniority roster and a Carrier's recession in business, he is not permitted to work in the craft of locomotive fireman or in any other craft. This, of course, is due to the number of excess "fixture firemen" employed thus preventing the hired engineer assuming work opportunity (23 veto firemen assignments) in the firemen craft. Provisions flowing from the Award of Arbitration Board 282 have given the hired engineer on this property several opportunities while creating a potential engineer shortage at some future date by their failure of returning to employment after having been furloughed and obtaining more stabilized employment elsewhere. This statement is not made for the purpose of humor or insolence but only to demonstrate that the hired engineer is not subject to the ebb-and-flow condition as previously existed on this property and the only opportunity now available when not working as a locomotive engineer is to: (1) Look for another job until called to return to work as an engineer, or, (2) receive Railroad Unemployment Benefits if qualified.

(7) The engineers who were promoted have a standing above the thirty-three (33) hired engineers on the seniority roster and they are not subjected to an ebb-and-flow account of their senior standings on said list.

(8) Some of the referred to "fixture firemen" desired to be promoted to the craft of locomotive engineer. These firemen inasmuch as they had previously declined the opportunity to become locomotive engineers were prevented

from accepting such an opportunity again. This General Committee was not a party in preventing these firemen the opportunity of becoming an engineer.

(9) Due to the Carrier having an excessive amount of "fixture firemen" they have not hired additional firemen for the purpose of training as engineers. At this time, vacation periods are at a minimum and under the existing agreements this alone will cause a shortage of locomotive engineers in the very near future (within four months). If the Carrier has an increased volume of business above the present level they have no engineers available to handle such increase. If the Carrier's business volume remains the same, as of this date, there will be a shortage of sixteen (16) engineers on May 15, 1967, and twenty (20) engineers on May 22, 1967. This shortage of engineers, under present business volume, will continue for the remainder of the year 1967 and continue throughout the coming years. We need not mention other factors outside the scheduled vacations to indicate the immediate need for the training of locomotive engineers on the Terminal Railroad Association of St. Louis.

(10) This General Committee, in light of the future needs of the locomotive engineer craft, is endeavoring to establish a training program for this purpose. There have been several conferences held with the Terminal Management regarding this matter. We have not served a formal notice as provided by the Railway Labor Act account of the Carrier's willingness to discuss the matter and subsequently investigating programs regarding the type of training advocated by this Committee in conference which will be mandatory for their future employees in the craft of locomotive engineer.

E. E. WATSON.

Sworn to before me and subscribed in my presence this 2nd day of February, 1967.

LORETTA COX,
Notary Public,
My Commission Expires Oct. 22, 1970.